

APPEAL NO. 030395
FILED APRIL 4, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 16, 2003. With respect to the disputed issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable mental trauma injury on _____, and thus did not have disability as a result of the alleged injury. In addition, the hearing officer determined that the respondent (carrier) would nonetheless have been relieved of liability under Section 409.002 because of the claimant's failure to timely report the alleged injury to his employer pursuant to Section 409.001. The claimant appeals on sufficiency of the evidence grounds, challenging the credibility of the carrier's witnesses and one of the carrier's exhibits that was excluded at the CCH. The carrier responds, noting that the alleged carrier's exhibit attached to the claimant's appeal was not the one proffered by the carrier at the CCH, and urging that the hearing officer be affirmed.

DECISION

Affirmed.

We first address the exhibit attached to the claimant's appeal and designated by the claimant as being an exhibit proffered by the carrier at the CCH. As the carrier notes in its response, this document, Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41), is not a copy of any of its admitted exhibits, but a copy of Claimant's Exhibit No. 1. In addition, as also noted by the carrier, the copy of the TWCC-41 attached to the claimant's appeal is different from that admitted at the CCH and proffered by the claimant, in that it has additional handwritten comments on it. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. *See generally* Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). Upon our review, the evidence offered is not so material that it would probably produce a different result, nor is it shown that the document could not have been obtained prior to the hearing below. The attached TWCC-41, therefore, does not meet the requirements for newly discovered evidence and will not be considered on appeal.

The hearing officer did not err in determining that the claimant did not sustain a compensable mental trauma injury on _____, and thus had no disability as a result of the alleged injury. The claimant testified that he suffered from "traumatic neurosis" as a result of being involved in a motor vehicle accident (MVA), which resulted in multiple fatalities on _____. One of the fatalities was a nine-year-old girl, about the same age as the claimant's daughter. The claimant alleged that seeing the little girl at the scene of the MVA caused him nightmares and sleep disorders, and rendered him unable to work at his job as a truck driver. The carrier argued that the

claimant continued in his capacity as a truck driver for many months, and not until the employer moved the claimant to a mechanic's position in June of 2002 did the claimant begin to complain about his job. In addition, the carrier argued, and the claimant confirmed in his testimony, that the claimant represented to the Texas Workforce Commission that he was able to work in order to receive unemployment benefits. The medical evidence presented by the claimant was sparse and vague. Under the 1989 Act, the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer wrote that the claimant was "neither credible nor truthful." The hearing officer was acting within his province as the fact finder in resolving the evidence in favor of the carrier and nothing in our review of the record demonstrates that the hearing officer's determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer did not err in determining that the carrier was relieved of liability under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001. The parties did not dispute that the alleged date of injury was _____. The claimant argued that he notified his employer, *de facto*, since the date of injury, of his worsening problems because of the accident, and that he hand delivered written notice to his employer on July 10, 2002. The carrier argued that the claimant first notified the employer of his claim on September 9, 2002. The hearing officer agreed with the carrier's date and found that September 9, 2002, was more than 30 days after the date of injury and that the claimant did not trivialize his alleged injury or have other good cause for his failure to timely report his alleged injury to his employer. See Cain, *supra*.

The hearing officer's decision and order is affirmed.

The true corporate name of the insurance carrier is **LIBERTY INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Terri Kay Oliver
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Robert W. Potts
Appeals Judge